

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA)
)
)
v.)
)
MARK NUTTER, Defendant)
)
)

MOTION TO CORRECT SENTENCE

Now comes the defendant, Mark Nutter, and pursuant to Crim. R. 35 (a) for the Rules of Criminal Procedure, requests this Honorable Court to correct the sentence imposed on February 13, 2008 on the ground that the sentence imposed was clear error. The defendant asserts that his sentence for violating 18 U. S. C. section 844(i) (Count 1: arson), 18 U. S. C. section 1341 (Counts 2-4: mail fraud) and 18 U. S. C. section 1844(h)(1) (Count 5: using fire to commit a felony) must be vacated because the sentence contains multiple punishments for the same offense in violation of the Double Jeopardy Clause, U. S. Constitution, Fifth Amendment.

In support of this motion Nutter states that in order to determine whether it is permissible for this Honorable Court to impose multiple punishments for one course of conduct it is necessary to determine the intent of the legislature. In the matter of Blockburger v. United States, 248 U. S. 299, 52 S. Ct. 180, 76 L. Ed. 306 (1932) the Supreme Court established the Blockburger test to determine whether the legislature intended to authorize multiple punishments. Under Blockburger, “where the same act or transaction constitutes a violation of two (or more) distinct statutory provisions, the test

to be applied to determine whether there are two (or more) offenses or only one is whether each provision requires proof of an additional fact which the other does not.”

Blockburger v. United States, 248 U. S. at 304, 52 S. Ct. 180.

The defendant asserts that his sentence must be set aside because when the elements of the arson conviction and the elements of the mail fraud convictions are combined together and then compared with the elements of the using fire to commit a felony conviction, the Blockburger test is not met. Combining the elements of mail fraud and arson satisfies all of the elements of the using fire offense and therefore the using fire conviction is duplicative. Since the Blockburger test was not met, the sentence imposed upon him on February 13, 2008 violated the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

WHEREFORE, the defendant requests that the sentence imposed be vacated and that he be resentenced.

/s/ Stephen J. Weymouth

65a Atlantic Avenue
Boston, MA 02110
617-573-9598
BBO #523680

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to registered participants on February 16, 2008.

/s/ Stephen J. Weymouth